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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,887	12/11/2001	Midoriko Kato	CU-2771 RJS	6708

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EXAMINER

HUNG, YUBIN

ART UNIT PAPER NUMBER

2625

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,887

Applicant(s)

KATO ET AL.

Examiner

Yubin Hung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/11/2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date All 4 thru 8/9/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on 13 April 2000. It is noted, however, that applicant has not filed a certified copy of the 2000-112667 application as required by 35 U.S.C. 119(b).

Drawings

2. Figures 1 and 4 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. [(Figures 1 and 4 are nearly identical to Figures 10 and 2, respectively, of Ruriko et al. (EP0828230A2.))] See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.121(d)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 4 is vague and indefinite because "setting **an** image index" in lines 3-4 and "or" in line 5 together clearly indicate that only one image index is set; however, lines 16 and 21 of the claim both recite "the two image indexes.

(Note: For examination purpose the "or" in line 5 will be interpreted to be intended as, and be substituted with, "and another image index.")

6. Claim 6 recites the limitation "coordinate point data" in line 26. There is insufficient antecedent basis for this limitation in the claim.

(Note: For examination purpose "coordinate point data" will be interpreted as "coordinate plane data.")

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 7 and 8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, claims 7 and 8 are directed to a "make-up color image map," which is a compilation and

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arrangement of data and is considered a nonfunctional descriptive material.

Therefore it is non-statutory subject matter. (MPEP, Rev. 2, May 2004, Sect. 2106.IV.B.1, P. 2100-11 through P. 2100-12.)

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galazin (US 6,000,407), Ruriko et al. (EP 0828230A2) and Macchio et al. (US 6,045,783).

11. Regarding claim 1, Galazin discloses

- classifying using a color image index chosen from among, and indicating at least one of, warm/cool, character, mind, obtained from applying color to skin
[Fig. 3, numeral 18; Col. 7, lines 19-28 and 52-53]

Galazin does not expressly disclose

- Classifying at least one or the other of either a lip color or an eye color
- classifying using a color image index chosen from among, and indicating at least one of, light/dignified, mature/immature, mature

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However, Macchio teaches applying lipsticks to lips and subsequently analyzing the resultant lip images [Col. 5, lines 8-13] and Ruriko teaches classifying face images using two indices, one being the mature/neonate (i.e., immature) index [Figs. 2, 10, 12; Col. 4, line 57 – Col. 5, line 3; Col. 8, lines 53-58]

Galazin, Ruriko and Macchio are combinable because they are from the field of endeavor of feature analysis (for cosmetic applications).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Galazin with the teachings of Macchio and Ruriko by classifying lip color as well as using an additional color image index indicating mature/neonate (i.e., immature). The motivation would have been because lipsticks are one of the major cosmetic products and that the degree of maturity is an important facial trait, which is important in determining personal colors of individuals.

Therefore, it would have been obvious to combine Ruriko and Macchio with Galazin to obtain the invention of claim 1.

12. Regarding claim 2, Ruriko further discloses classifying two-dimensionally. [Figs. 10, 14.]

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13. Regarding claim 3 the combined invention of Galazin, Ruriko and Macchio discloses or teaches

- an image index setting step for setting either an image index chosen from among and indicating at least one of warm/cool, character and mind or an image index chosen from among and indicating at least one of light/dignified, mature/immature and mature
[Galazin: Fig. 2, numeral 31; Col. 4, lines 47-55. Note that the index indicating warm-cool is set here]
- a made-up face data acquisition step for acquiring made-up face data for a plurality of types of make-up material for at least one of lip color and eye color applied to a face
[Galazin: Col. 7, lines 20-22 (applying make-up to face)]
[Macchio: Col. 5, lines 8-13 (apply lipstick to lips)]
[Ruriko: Fig. 2; Col. 4, lines 53-56. Note that clearly the photographs of faces have been acquired at a separate acquisition step. Note further that Fig. 2 clearly indicates that the images are input and displayed]
- a make-up color image evaluation step, in which a plurality of test subjects evaluate a color image of the make-up material based on the made-up face data using the image index as an evaluation criteria and a make-up color image classification step for classifying the make-up material based on the obtained make-up material color image using the image index
[Ruriko: Col. 4, line 53-56 (note that there are 12 female participants, i.e., test subjects, who evaluate images)]
[Galazin: Fig. 3, numeral 18 and Col. 7, lines 28-41 teach using image index (e.g., cool/warm) to evaluate and then classify images]

14. Regarding claim 4, note that per the analysis of claim 3 above the combined invention of Galazin, Ruriko and Macchio discloses or teaches:

- an image index setting step for setting an image index chosen from among and indicating at least one of warm/cool, character and mind
- a made-up face data acquisition step for acquiring made-up face data for a plurality of types of make-up material for at least one of lip color and eye color applied to a face
- a make-up color image evaluation step, in which a plurality of test subjects evaluate a color image of the make-up material based on the made-up face data using (the warm/cool) image index as an evaluation criteria
- a make-up color image classification step for classifying the make-up material based on the obtained make-up material color image using the (warm/cool) image index

Ruriko further discloses

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- setting another image index chosen from among and indicating at least one of light/dignified, mature/immature and mature [Figs. 2, 10, 12; Col. 4, line 57 - Col. 5, line3; Col. 8, lines 53-58]
- (use the two chosen image indices) as two coordinate axes as well as an evaluation criteria, and two-dimensionally classifying the make-up material based on the obtained make-up material color image using the two image indexes as coordinate axes [Fig. 14. Note that Fig. 14 indicates a two-dimensional classification. Note further that per the analysis of claim, Ruriko teaches using mature/immature as one axis while Galazin teaches using warm/cool as the other]

15. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galazin (US 6,000,407), Ruriko et al. (EP 0828230A2) and Macchio et al. (US 6,045,783) as applied to claim 1-4, and further in view of Kuroda et al. (US 6,132,743).

16. Regarding claim 5, per the analysis of claim 3, the combined invention of Galazin, Ruriko and Macchio discloses or teaches

- an image index display step for setting either an image index chosen from among and indicating at least one of warm/cool, character and mind or an image index chosen from among and indicating at least one of light/dignified, mature/immature and mature
- a made-up face data display step for inputting and displaying made-up face data for a plurality of types of make-up material for at least one of lip color and eye color applied to a face
- a make-up color image evaluation input step for evaluating a color image of the make-up material based on the made-up face data using the image index as an evaluation criteria

Galazin and Ruriko further teaches/suggests

- (that) the image index display step also input and display the chosen index [Galazin: Col. 7, lines 8-55. Note that the chosen index (the seasonal color designation chart, corresponding to the warm/cool

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- index, in this case) is used to help in the classification and therefore requires the index to have been input and displayed. Note further that although not expressly disclosed in Galazin, Ruriko teaches inputting and displaying on a monitor, as is shown in Fig. 2 of Ruriko.]
- a make-up color image classification data output step for statistically processing the totaled grading data and outputting results of a positioning of a plurality of types of make-up materials in relation to an image index
[Ruriko: col. 5, lines 21-31 (statistically processing evaluation result); Figs. 10, 14 (outputting positioning of the subjects being evaluated in relation to an image index)]

The combined invention of Galazin, Ruriko and Macchio does not expressly disclose

- (that) the make-up color image evaluation input step also input grading data
- a make-up color image evaluation data totaling step for adding up grading data input by a plurality of people

However, Kuroda teaches summing grading data (i.e., marks) of all panelists to obtain the evaluation results [col. 10, lines 65-66]; summing grading data obviously requires the data to have been input.

Galazin, Ruriko, Macchio and Kuroda are combinable because they are from the field of endeavor of feature analysis (for cosmetic applications).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the combined invention of Galazin, Ruriko and Macchio with the teachings of Kuroda by inputting and totaling grading data of multiple people.

The motivation would have been to obtain a more statistically sound evaluation results so as to make a better classification.

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Therefore, it would have been obvious to combine Kuroda with Galazin, Ruriko and Macchio to obtain the invention of claim 5.

17. Regarding claim 6, it is similarly analyzed and rejected as per the analyses of claims 4 and 5.

Conclusion and Contact Information

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Y. Takemae et al., "The Evaluating System on Human Skin Surface Condition by Image Processing," *2000 IEEE Conf. On Systems, Man, Cybernetics, V.1, 8-11 Oct. 2000*, pp. 218-223

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yubin Hung whose telephone number is (703) 305-1896. The examiner can normally be reached on 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (703) 308-5246. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yubin Hung
Patent Examiner
October 20, 2004



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